

**From:** DRhoads  
**To:** Microsoft ATR  
**Date:** 1/28/02 9:11pm  
**Subject:** Microsoft Settlement

Final Judgment for a variety of reasons. I shall briefly expound on but a few of them:

- 1) The potential breakup of Microsoft should be maintained as a future remedy to insure Microsoft's compliance.
- 2) Lack of punitive damages. Lacking provisions for an evolving industry, the Proposal seems focused on limited measures for a future that is only a simple extrapolation of yesterday's market. There are no penalties for Microsoft's outrageous conduct in the marketplace and before the Court. This sends the wrong message to anyone considering similar behaviour.
- 3) The Termination of the Decree should NOT occur before ten (10) years from date of entry. Further, the length of any extension should be five (5) years, rather than two. Given that the present proceedings before the Court have consumed almost four (4) years with no action, it is not inconceivable that Microsoft could similarly delay and obstruct a three person panel for the proposed five (5) years.
- 4) The construction of the Technical Committee (hereafter, TC) is faulty. Potentially, two of the three members of the TC will be answerable only to Microsoft and not to the Plaintiffs. This provides a majority which could veto any action or decision of the TC. The TC should consist of a minimum of five (5) persons, none of whom is appointed by Microsoft. The Defendant's interests could be represented by a non-voting, non-directing liaison to the TC. Also, the TC should be composed of persons with significant experience as auditors or inspectors general, who will be assisted by software experts.
- 5) MOST IMPORTANT. According to Section IV.D.4.d of the Stipulation, no member of the TC may direct any findings to any other tribunal. This is UNACCEPTABLE! The Congress, other Courts and other States cannot be constrained by this Proposal in any of their future proceedings. In particular, this Section would disallow a member of the TC from informing authorities of a violation of law, including, but not limited to, the Sherman Act.

The Proposed Final Judgment is seriously flawed and should be withdrawn from consideration. DOJ should rejoin with Utah, et al and use their proposals as a starting point for further negotiations.

Sincerely,  
David Rhoads

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